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**U.S. B Singapore Free Trade Agreement**  
**Text of the Agreement**

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DRAFT  
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**PART EIGHT**

**CHAPTER 16: INTELLECTUAL PROPERTY RIGHTS**

**U.S. - Singapore Consolidated Text**

**ARTICLE 16.01: GENERAL PROVISIONS**

1. Each Party shall, at a minimum, give effect to this Chapter, including the following provisions:
  - (a) Articles 1 through 6 of the Joint Recommendation Concerning Provisions on the Protection of Well-Known Marks (1999), adopted by the Assembly of the Paris Union for the Protection of Industrial Property and the General Assembly of the World Intellectual Property Organization (AWIPO®); and
  - (b) the Trademark Law Treaty.<sup>1</sup>
2. (a) Each Party shall ratify or accede to the following agreements:
  - (i) the Brussels Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite (1974);
  - (ii) the International Convention for the Protection of New Varieties of Plants (1991) (AUPOV Convention®);
  - (iii) the WIPO Copyright Treaty (1996);
  - (iv) the WIPO Performances and Phonograms Treaty (1996); and
  - (v) the Patent Cooperation Treaty (1984).
- (b) Each Party shall make best efforts to ratify or accede to the Hague Agreement Concerning the International Deposit of Industrial Designs (1999) and the Protocol relating to the Madrid Agreement Concerning the International Registration of Marks (1989).

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<sup>1</sup> Singapore shall not be obligated to give effect to Articles 6 and 7 of the Trademark Law Treaty.

DRAFT

**Subject to Legal Review for Clarity and Consistency**

3. In respect of all categories of intellectual property covered in this Chapter, each Party shall accord to nationals of the other Party treatment no less favorable than it accords to its own nationals with regard to the protection<sup>2</sup> and enjoyment of all intellectual property and any benefits derived therefrom<sup>3</sup>.
4. Each Party may derogate from paragraph 3 in relation to its judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Party, only where such derogations are necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Chapter and where such practices are not applied in a manner that would constitute a disguised restriction on trade.
5. The obligations under paragraphs 3 and 4 do not apply to procedures provided in multilateral agreements concluded under the auspices of WIPO relating to the acquisition or maintenance of intellectual property rights.
6. Except as otherwise provided for in this Chapter,
- (a) this Chapter gives rise to obligations in respect of all subject matter existing at the date of entry into force of this Agreement, and which is protected on the said date in the Party where the protection is claimed, or which meets or comes subsequently to meet the criteria for protection under the terms of this Chapter.
  - (b) There shall be no obligation to restore protection to subject matter which on the date of entry into force of this Agreement has fallen into the public domain of the Party where the protection is claimed.

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<sup>2</sup> For purposes of paragraphs 3 and 4, Aprotection@shall include matters affecting the availability, acquisition, scope, maintenance and enforcement of intellectual property rights as well as matters affecting the use of intellectual property rights specifically covered by this Agreement. For purposes of paragraphs 3 and 4, Aprotection@shall also include the prohibition on circumvention of effective technological measures pursuant to Article 16.4.7 and the provision concerning rights management information pursuant to Article 16.4.8.

<sup>3</sup> ABenefits derived therefrom@refers to benefits such as levies on blank tapes.

DRAFT

**Subject to Legal Review for Clarity and Consistency**

7. This Chapter does not give rise to obligations in respect of acts which occurred before the date of entry into force of the Agreement.

**ARTICLE 16.2: TRADEMARKS AND GEOGRAPHICAL INDICATIONS**

1. Trademarks shall include service marks, collective marks and certification marks,<sup>4</sup> and may include geographical indications.<sup>5</sup> No Party shall require, as a condition of registration, that signs be visually perceptible, but each Party shall make best efforts to register scent marks. Each Party shall afford an opportunity for the registration of a trademark to be opposed.

2. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs, including geographical indications, for goods or services which are related to those in respect of which the trademark is registered, where such use would result in a likelihood of confusion.

3. Each Party may provide limited exceptions to the rights conferred by a trademark, such as fair use of descriptive terms, provided that such exceptions take account of the legitimate interests of the owner of the trademark and of third parties.

4. Article 6bis of the *Paris Convention for the Protection of Industrial Property* (1967) (Paris Convention®) shall apply, *mutatis mutandis*, to goods or services which are not similar to those identified by a well-known trademark, whether registered or not, provided that use of that trademark in relation to those goods or services would indicate a connection between those goods or services and the owner of the trademark and provided that the interests of the owner of the trademark are likely to be damaged by such use.

5. Neither Party shall require recordal of trademark licenses to establish the validity of the license or to assert any rights in a trademark.

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<sup>4</sup> Neither Party is obligated to treat certification marks as a separate category in national law, provided that such marks are protected.

<sup>5</sup> A geographical indication shall be capable of constituting a trademark to the extent that the geographical indication consists of any sign, or any combination of signs, capable of identifying a good or service as originating in the territory of a Party, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good or service is essentially attributable to its geographical origin.

DRAFT  
**Subject to Legal Review for Clarity and Consistency**

6. Pursuant to Article 20 of the Agreement on Trade-Related Aspects of Intellectual Property Rights 1994 (TRIPS Agreement<sup>6</sup>), each Party shall ensure that provisions mandating the use of the generic name of products including, *inter alia*, requirements concerning the relative size, placement or style of use of the trademark in relation to the generic name, do not impair the use or effectiveness of trademarks used in relation to such products.<sup>6</sup>

**ARTICLE 16.3: DOMAIN NAMES ON THE INTERNET**

1. Each Party shall engage in the process of the Governmental Advisory Committee (GAC) of the Internet Corporation for Assigned Names and Numbers (ICANN), which serves to consider and provide advice on the activities of ICANN as they relate to concerns of government, including issues related to intellectual property and the domain name system, as well as promote responsible country code Top Level Domain (ccTLD) administration, management and operational practices.

2. Each Party shall provide that registrants in their corresponding ccTLD are subject to a dispute resolution procedure, modeled along the same lines as the principles set forth in ICANN Uniform Domain Name Dispute Resolution Policy (ICANN UDRP), to address and resolve disputes related to the bad-faith registration of domain names in violation of trademarks. Each Party shall also ensure that their corresponding ccTLDs provide public access to a reliable and accurate WHOIS database of domain name registrant contact information.

**ARTICLE 16.4: OBLIGATIONS COMMON TO COPYRIGHT AND RELATED RIGHTS**

1. Each Party shall provide that authors, performers and producers of phonograms and their successors in interest have the right to authorize or prohibit all reproductions, in any manner or form, permanent or temporary (including temporary storage in electronic form).

2. (a) Without prejudice to the provisions of Articles 11(1)(ii), 11bis(1)(i) and (ii), 11ter(1)(ii), 14(1)(ii), and 14bis(1) of the Berne Convention, each Party shall provide to authors, to performers, to producers of phonograms and to their successors in interest the exclusive right to authorize or prohibit the communication to the public of their works, performances or phonograms, by wire or wireless means, including the making available to the public of their works, performances and phonograms in such a way that members of the public may access them from a place and at a time individually chosen by them. This right may be subject, in the case of performers and terrestrial broadcasting and further, with respect to other non-interactive transmissions, may be subject to national limitations in certain special cases as may be set forth in national law or regulate producers of phonograms, to national exceptions or limitations for analog or digital free over-the-air transmissions,

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<sup>6</sup> This provision is not intended to affect the use of generic names of products in prescribing medicine.

DRAFT

**Subject to Legal Review for Clarity and Consistency**

provided that such limitations do not conflict with a normal exploitation of performances or phonograms and do not unreasonably prejudice the interests of such right holders.

(b) Each Party agrees that it will not permit the retransmission of television signals (whether terrestrial, cable, or satellite) on the Internet without the authorization of the right holder in the subject matter of the signal.

3. Each Party shall provide to authors, to performers, to producers of phonograms and to their successors in interest the exclusive right of authorizing the making available to the public of the original and copies of their works and phonograms through sale or other transfer of ownership.

4. Each Party shall provide that:

(a) where the term of protection of a work (including a photographic work), performance or phonogram is to be calculated on the basis of the life of a natural person, the term shall be not less than the life of the author and 70 years after the author's death; and

(b) where the term of protection of a work (including a photographic work), performance or phonogram is to be calculated on a basis other than the life of a natural person, the term shall be not less than 70 years from the end of the calendar year of the first authorized publication of the work, performance or phonogram or, failing such authorized publication within 50 years from the creation of the work, performance or phonogram, not less than 70 years from the end of the calendar year of the creation of the work, performance or phonogram.

5. Each Party shall apply the provisions of Article 18 of the Berne Convention, *mutatis mutandis*, to the subject matter, rights and obligations provided for in Articles 16.4 and 16.5.

6. Each Party shall provide that for copyright and related rights:

(a) any person acquiring or holding any economic rights may freely and separately transfer such rights by contract; and

(b) any person acquiring or holding any such economic rights by virtue of a contract, including contracts of employment underlying the creation of works and phonograms, shall be able to exercise those rights in its own name and enjoy fully the benefits derived from those rights.

7. (a) In order to provide adequate legal protection and effective legal remedies against the circumvention of effective technological measures that are used by authors, by performers, by producers of phonograms and their successors in interest in connection with the exercise of their rights and that restrict unauthorized acts in respect of their works, performances and phonograms, each Party shall provide that any person who

(i) knowingly, or having reasonable grounds to know, circumvents without authority any effective technological measure that controls access to a protected work, performance, phonogram, or other subject matter; or

DRAFT

**Subject to Legal Review for Clarity and Consistency**

(ii) manufactures, imports, distributes, offers to the public, provides or otherwise traffics in devices, products or components or offers to the public or provides services, which:

- (1) are promoted, advertised or marketed for the purpose of circumvention of any effective technological measure, or
- (2) have only a limited commercially significant purpose or use other than to circumvent any effective technological measure, or
- (3) are primarily designed, produced, or performed for the purpose of enabling or facilitating the circumvention of any effective technological measure;

shall be liable, upon the suit of any injured party, to relief by way of damages, injunction, accounts or otherwise. Each Party shall provide that any person, other than a nonprofit library, archive, educational institution, or public noncommercial broadcasting entity, that is found to have engaged willfully and for purposes of commercial advantage or private financial gain in such activities shall be guilty of a criminal offense.

(b) Effective technological measure means any technology, device or component that, in the normal course of its operation, controls access to a protected work, performance, phonogram, or other subject matter, or protects any copyright or any rights related to copyright.

(c) The prohibition referred to in Article 16.4.7(a) prohibits circumvention of technological measures and does not require an affirmative response to such measures. This Article does not require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications or computing product provide for a response to any particular technological measure. This does not provide a defense to a claim of violation of Article 16.4.7(a). This Article does not require that the design of, or the design and selection of parts and components for, a consumer electronics, telecommunications or computing product provide for a response to any particular technological measure. This does not provide a defense to a claim of violation of Article 16.4.7(a).

(d) Each Party shall provide that a violation of the law implementing the provisions of this Article is independent of any infringement that might occur under the Party's law on copyright and related rights.

(e) Each party shall confine limitations to the prohibition on technology, products, services, or devices which circumvent effective technological measures which control access to, and, in the case of paragraph (i), which protect any of the exclusive rights of copyright or related rights in, a protected work referred to in Article 16.4.7(a)(ii) to the following activities, provided that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures:

- (i) noninfringing reverse engineering activities with regard to a lawfully obtained copy of a computer program, carried out in good faith with respect to particular elements



DRAFT

**Subject to Legal Review for Clarity and Consistency**

of that computer program that have not been readily available to that person, for the sole purpose of achieving interoperability of an independently created computer program with other programs;

(ii) noninfringing good faith activities, carried out by an appropriately qualified researcher who has lawfully obtained a copy, performance or display of a work, and who has made a good faith effort to obtain authorization for such activities, to the extent necessary for the sole purpose of identifying and analyzing flaws and vulnerabilities of technologies for scrambling and descrambling of information;

(iii) the inclusion of a component or part for the sole purpose of preventing the access of minors to inappropriate online content in a technology, product, service, or device that does not itself violate Article 16.4.7(a)(ii); and

(iv) noninfringing good faith activities that are authorized by the owner of the computer, computer system, or computer network for the sole purpose of testing, investigating, or correcting the security of that computer, computer system, or computer network.

(f) Each party shall confine limitations to the prohibition referred to in Article 16.4.7(a)(i) to the activities listed in paragraph (e) and the following activities, provided that they do not impair the adequacy of legal protection or the effectiveness of legal remedies against the circumvention of effective technological measures:

(i) access by a nonprofit library, archive, or educational institution to a work not otherwise available to it, for the sole purpose of making acquisition decisions;

(ii) noninfringing activities for the sole purpose of identifying and disabling a capability to carry out undisclosed collection or dissemination of personally identifying information reflecting the online activities of a natural person in a way that has no other effect on the ability of any person to gain access to any work; and

(iii) noninfringing uses of a particular class of works when an actual or likely adverse impact on such noninfringing uses with respect to such particular class of works is credibly demonstrated in a legislative or administrative proceeding, provided that any limitation adopted in reliance upon this subparagraph shall have effect for a period of not more than four years from the date of conclusion of such proceeding.

(g) Each party shall confine limitations to all the prohibitions referred to in Article 16.4.8 to the lawfully authorized activities carried out by government employees, agents, or contractors for the purpose of law enforcement, intelligence, national defense, essential security or similar government activities.

8. In order to provide adequate and effective legal remedies to protect rights management information:

DRAFT

**Subject to Legal Review for Clarity and Consistency**

(a) each Party shall provide that any person who without authority, and knowingly, or, with respect to civil remedies, having reasonable grounds to know, that it will induce, enable, facilitate, or conceal an infringement of any copyright or related right,

(i) knowingly removes or alters any rights management information;

(ii) distributes or imports for distribution rights management information knowing that the rights management information has been altered without authority; or

(iii) distributes, imports for distribution, broadcasts, communicates or makes available to the public copies of works or phonograms, knowing that rights management information has been removed or altered without authority,

shall be liable, upon the suit of any injured party, to relief by way of damages, injunction, accounts or otherwise. Each Party shall provide that any person, other than a nonprofit library, archive, educational institution, or public noncommercial broadcasting entity, that is found to have engaged willfully and for purposes of commercial advantage or private financial gain in such activities shall be guilty of a criminal offense.

(b) Rights management information means information which identifies a work, performance, or phonogram; the author of the work, the performer of the performance, or the producer of the phonogram; or the owner of any right in the work, performance or phonogram; information about the terms and conditions of the use of the work, performance or phonogram; and any numbers or codes that represent such information, when any of these items is attached to a copy of the work, performance or phonogram or appears in conjunction with the communication or making available of a work, performance or phonogram to the public. Nothing in this section requires the owner of any right in the work, performance or phonogram to attach rights management information to copies of it or to cause rights management information to appear in connection with a communication of the work, performance or phonogram to the public.

9. Each Party shall issue appropriate administrative or executive decrees, laws, orders or regulations mandating that all government agencies use only computer software authorized for intended use. Such instruments shall actively regulate the acquisition and management of software for such government use, which may take the form of procedures such as preparing and maintaining inventories of software present on agencies=computers and inventories of existing software licenses.

10. Each Party shall confine limitations or exceptions to exclusive rights to certain special cases which do not conflict with a normal exploitation of the work, performance or phonogram, and do not unreasonably prejudice the legitimate interests of the right holder.

**ARTICLE 16.5: OBLIGATIONS PERTAINING SPECIFICALLY TO RELATED RIGHTS**

1. Each Party shall accord the protection provided under this Chapter to the performers and producers of phonograms who are nationals of the other Party and to performances or phonograms first published or

DRAFT  
**Subject to Legal Review for Clarity and Consistency**

fixed in the territory of the other Party. A performance or phonogram shall be considered first published in any Party in which it is published within 30 days of its original publication.<sup>7</sup>

2. Each Party shall provide to performers the right to authorize or prohibit
  - (a) the communication to the public of their unfixed performances except where the performance is already a broadcast performance, and
  - (b) the fixation of their unfixed performances.
3. With respect to all rights of performers and producers of phonograms, the enjoyment and exercise of these rights provided for in this Chapter shall not be subject to any formality.
4. For the purposes of this Chapter, the following definitions apply with respect to performers and producers of phonograms:
  - (a) performers are actors, singers, musicians, dancers, and other persons who act, sing, deliver, declaim, play in, interpret, or otherwise perform literary or artistic works or expressions of folklore;

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<sup>7</sup> For the application of Article 16.5.1, it is understood that fixation means the finalization of the master tape.

DRAFT

**Subject to Legal Review for Clarity and Consistency**

- (b) phonogram means the fixation of the sounds of a performance or of other sounds, or of a representation of sounds, other than in the form of a fixation incorporated in a cinematographic or other audiovisual work;<sup>8</sup>
- (c) fixation means the embodiment of sounds, or of the representations thereof, from which they can be perceived, reproduced or communicated through a device;
- (d) producer of a phonogram means the person, or the legal entity, who or which takes the initiative and has the responsibility for the first fixation of the sounds of a performance or other sounds, or the representations of sounds;
- (e) publication of a fixed performance or a phonogram means the offering of copies of the fixed performance or the phonogram to the public, with the consent of the right holder, and provided that copies are offered to the public in reasonable quantity;
- (f) broadcasting means the transmission by wireless means for public reception of sounds or of images and sounds or of the representations thereof; such transmission by satellite is also broadcasting; transmission of encrypted signals is broadcasting where the means for decrypting are provided to the public by the broadcasting organization or with its consent.

**ARTICLE 16.6: PROTECTION OF ENCRYPTED PROGRAM-CARRYING SATELLITE SIGNALS**

1. Each Party shall make it:
  - (a) a criminal offense to manufacture, assemble, modify, import, export, sell, lease or otherwise distribute a tangible or intangible device or system, knowing or having reason to know that the device or system is primarily of assistance in decoding an encrypted program-carrying satellite signal without the authorization of the lawful distributor of such signal;
  - (b) a criminal offense willfully to receive or further distribute an encrypted program-carrying satellite signal that has been decoded without the authorization of the lawful distributor of the signal; and
  - (c) a civil offense to engage in any activity prohibited under subparagraph (a) or (b).

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<sup>8</sup> It is understood that the definition of phonogram provided herein does not suggest that rights in the phonogram are in any way affected through their incorporation into a cinematographic or other audiovisual work.

DRAFT

**Subject to Legal Review for Clarity and Consistency**

2. Each Party shall provide that any civil offense established under subparagraph (c) shall be actionable by any person that holds an interest in the encrypted programming signal or the content thereof.

**ARTICLE 16.7: PATENTS**

1. Each Party shall make patents available for any invention, whether a product or a process, in all fields of technology, provided that the invention is new, involves an inventive step and is capable of industrial application. For purposes of this Article, a Party may treat the terms "inventive step" and "capable of industrial application" as being synonymous with the terms "non-obvious" and "useful", respectively. Each party may exclude inventions from patentability only as defined in Articles 27.2 and 27.3(a) of the TRIPS Agreement.

2. Patent owners shall also have the right to assign, or transfer by succession, the patent and to conclude licensing contracts. Each Party shall provide a cause of action to prevent or redress the procurement of a patented pharmaceutical product against a party who knows or has reason to know that such product is or has been distributed in breach of a contract between the rightholder and a licensee, regardless of whether such breach occurs in or outside its territory.<sup>9</sup> In such a cause of action, notice shall constitute constructive knowledge.

3. Each Party may provide limited exceptions to the exclusive rights conferred by a patent, provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner, taking account of the legitimate interests of third parties.

4. Each Party shall provide that a patent may only be revoked on grounds that exist that would have justified a refusal to grant the patent, or that pertain to the insufficiency of or unauthorized amendments to the patent specification, non-disclosure or misrepresentation of prescribed material particulars, fraud and misrepresentation. Where such proceedings include opposition proceedings, such proceedings shall not be made available prior to the grant of the patent.

5. If a Party permits the use by a third party of a subsisting patent to support an application for marketing approval of a pharmaceutical product, that Party shall provide that any product produced under this authority shall not be made, used or sold in the territory of that Party other than for purposes related to meeting requirements for marketing approval, and if export is permitted, the product shall only be exported outside the territory of that Party for requirements for purposes of meeting marketing approval in that Party.

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<sup>9</sup> A Party may limit such cause of action to cases where the product has been sold or distributed only outside the Party's territory before its procurement inside the Party's territory.

DRAFT

**Subject to Legal Review for Clarity and Consistency**

6. Neither Party shall permit the use<sup>10</sup> of the subject matter of a patent without the authorization of the right holder except in the following circumstances:

- (a) to remedy a practice determined after judicial or administrative process to be anti-competitive under the competition laws of the Party;<sup>11</sup>
- (b) in the case of public non-commercial use or in the case of a national emergency or other circumstances of extreme urgency, provided that:
  - (i) such use is limited to use by the government or third parties authorized by the government;
  - (ii) the patent owner is provided with reasonable and entire compensation for such use and manufacture; and,
  - (iii) Parties shall not require the patent owner to transfer undisclosed information or technical "know how" related to a patented invention that has been subjected to involuntary use authorization.

Where the law of a Party allows for such use pursuant to subparagraphs (a) and (b) above, the Party shall respect the provisions of Article 31 of TRIPS.

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<sup>10</sup> AUse@in this provision refers to use other than that allowed in paragraph 3 of Article \_07.

<sup>11</sup> The Parties recognize that an intellectual property right does not necessarily confer market power upon its owner.

DRAFT

**Subject to Legal Review for Clarity and Consistency**

7. Each Party, at the request of the patent owner, shall extend the term of a patent to compensate for unreasonable delays that occur in granting the patent. For the purposes of this paragraph, an unreasonable delay shall at least include a delay in the issuance of the patent of more than four years from the date of filing of the application in the Party, or two years after a request for examination of the application has been made, whichever is later, provided that periods of time attributable to actions of the patent applicant need not be included in the determination of such delays.<sup>12</sup>

8. Where a Party provides for the grant of a patent on the basis of an examination of the invention conducted in another country, that Party, at the request of the patent owner, may extend the term of a patent, subject to a maximum of 5 years, to compensate for the unreasonable delay that may occur in the issuance of the patent granted by such other country where the term of the patent is extended by such other country pursuant to such unreasonable delay.

**ARTICLE 16.8: MEASURES RELATED TO CERTAIN REGULATED PRODUCTS**

1. If a Party requires the submission of information concerning the safety and efficacy of a pharmaceutical or agricultural chemical product prior to permitting the marketing of such product, such Party shall not permit third parties not having the consent of the party providing the information to market the same or a similar product on the basis of the approval granted to the party submitting such information for a period of at least five years from the date of approval for a pharmaceutical product and ten years from the date of approval for an agricultural chemical product.<sup>13</sup>

2. If a Party provides a means of granting approval to market products specified in paragraph 1 on the basis of the grant of an approval for marketing of the same or similar product in another country, the Party shall defer the date of any such approval to third parties not having the consent of the party providing the information in the other country for a period of at least five years from the date of approval for a

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<sup>12</sup> Periods of time attributable to actions of the patent applicant shall include such periods of time taken to file prescribed documents relating to the examination as provided in the laws of a Party.

<sup>13</sup> Where a Party, on the date of its implementation of the TRIPS Agreement, had in place a system for protecting pharmaceutical or agricultural chemical products not involving new chemical entities from unfair commercial use which conferred a different form or period of protection shorter than that specified in Article 16.8.1, that Party may retain such system notwithstanding the obligations of said paragraph.

DRAFT

**Subject to Legal Review for Clarity and Consistency**

pharmaceutical product and ten years from the date of approval for an agricultural chemical product in the Party or in the other country, whichever is later.

3. Where a product is subject to a system of marketing approval pursuant to paragraph 1 or 2 and is also subject to a patent in the Party, the Party shall not alter the term of protection specified in paragraphs 1 or 2 in the event that the patent expires on a date earlier than the end of the term of such protection.
4. With respect to pharmaceutical products that are subject to a patent:
  - (a) each Party shall make available an extension of the patent term to compensate the patent owner for unreasonable curtailment of the patent term as a result of the marketing approval process;
  - (b) the patent owner shall be notified of the identity of any third party requesting marketing approval effective during the term of the patent; and,
  - (c) the Party shall not grant marketing approval to any third party prior to the expiration of the patent term, unless by consent or acquiescence of the patent owner.

**ARTICLE 16.9: ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS**

General Obligations

1. Decisions on the merits of a case which under the domestic laws or practices of the Party are given general applicability shall preferably be in writing and shall state the reasons on which decisions are based.
2. Each Party shall ensure that all laws and regulations, procedures, final judicial decisions and administrative rulings of general application pertaining to the enforcement of intellectual property rights shall be published, or where such publication is not practicable made publicly available, in a national language, in such a manner as to enable governments and rights holders to become acquainted with them. Nothing in this paragraph shall require a Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.
3. Each Party shall publicize information on its efforts to provide effective enforcement of intellectual property rights in its civil, administrative and criminal system, including any statistical information that each Party may collect for such purposes.
4. It is understood that decisions made by the Parties on the distribution of enforcement resources shall not excuse a Party from complying with the provisions of this Chapter.
5. Each Party shall provide for civil remedies for violations described in Article 16.4.7 and Article 16.4.8. Available civil remedies shall include at least (a) provisional measures, including seizure of devices and products suspected of being involved in the violation; (b) the opportunity for the rightholder to elect between actual damages suffered by the rightholder (plus any profits attributable to the violation not taken into account in computing the actual damages) or pre-established damages; (c) payment to the prevailing rightholder of court costs and fees and reasonable attorney's fees by the infringer at the conclusion of the



DRAFT  
**Subject to Legal Review for Clarity and Consistency**

civil judicial proceedings; and (d) destruction of devices and products found to be involved in the violation.

6. In civil, administrative, and criminal proceedings involving copyright or related rights, each Party shall provide for a presumption that, in the absence of proof to the contrary, the natural person or legal entity whose name is indicated as the author, producer, performer, or publisher of the work, performance or phonogram in the usual manner, is the designated right holder in such work, performance or phonogram. Each Party shall also provide for a presumption that, in the absence of proof to the contrary, the copyright or related right subsists in such subject matter.

Civil and Administrative Procedures and Remedies

7. Each Party shall make available to right holders<sup>14</sup> civil judicial procedures concerning the enforcement of any intellectual property right.

8. In civil judicial proceedings, the judicial authorities shall have the authority, at least with respect to works, phonograms and performances protected by copyright or related rights, and in cases of trademark counterfeiting, to order the infringer to pay the right holder damages adequate to compensate for the injury the right holder has suffered because of an infringement of that person's intellectual property right by an infringer engaged in infringing activity, as well as the profits of the infringer that are attributable to the infringement and are not taken into account in computing the actual damages. In determining injury to the right holder, the judicial authorities shall, *inter alia*, consider the value of the infringed-upon good or service, according to the suggested retail price of the legitimate good or service.

9. In civil judicial proceedings, each Party shall, at least with respect to works, phonograms and performances protected by copyright or related rights, and in cases of trademark counterfeiting, establish or maintain in place pre-established damages upon the election of the right holder. Such pre-established damages must be in an amount sufficiently high to constitute a deterrent to future infringements with the intent to compensate the right holder for the harm caused by the infringement.

10. Each Party shall provide that its judicial authorities, except in exceptional circumstances, have the authority to order, at the conclusion of the civil judicial proceedings concerning copyright or related rights and trademark counterfeiting, that the prevailing right holder shall be paid the court costs or fees and reasonable attorney's fees by the infringing party.

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<sup>14</sup> For the purpose of these Articles concerning the enforcement of intellectual property rights, the term "right holder" shall include exclusive licensees as well as federations and associations having the legal standing to assert such rights; the term "exclusive licensee" shall include the exclusive licensee of any one or more of the exclusive rights comprised in a given intellectual property.

DRAFT  
**Subject to Legal Review for Clarity and Consistency**

11. In civil judicial proceedings concerning copyright or related right infringement and trademark counterfeiting, each Party shall provide that its judicial authorities shall have the authority to order the seizure of suspected infringing goods, and any related materials and implements used in the commission of the offense.

12. In civil judicial proceedings, at the right holder's request, goods that have been found to be pirated or counterfeit shall be destroyed, except in exceptional cases. The judicial authorities shall also have the authority to order that materials and implements which have been used in the creation of the infringing goods be, without compensation of any sort, promptly destroyed or, in exceptional cases, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In regard to counterfeit trademarked goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of goods into the channels of commerce.

13. In civil judicial proceedings, the judicial authorities shall have the authority to order the infringer to identify third parties that are involved in the production and distribution of the infringing goods or services and their channels of distribution and to provide this information to the right holder. Judicial authorities shall have the authority to fine or imprison in appropriate cases persons who fail to abide by valid orders issued by such authorities.

Provisional Measures

14. Requests for relief *inaudita altera parte* shall be dealt with expeditiously in accordance with the rules of court of the Parties.

15. The judicial authorities shall have the authority to require the applicant to provide any reasonably available evidence in order to satisfy themselves with a sufficient degree of certainty that the applicant's right is being infringed or that such infringement is imminent, and to order the applicant to provide a reasonable security or equivalent assurance set at a level sufficient to protect the defendant and to prevent abuse, and so as not to unreasonably deter recourse to such procedures. In the event that judicial or other authorities appoint experts, technical or otherwise, that must be paid by the plaintiffs, such costs should be closely related *inter alia* to the quantity of work to be performed and should not unreasonably deter recourse to such relief.

Special Requirements Related to Border Measures

16. Any right holder initiating procedures for suspension by the customs authorities of the release of suspected counterfeit trademark or pirated copyright goods<sup>15</sup> into free circulation shall be required to

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<sup>15</sup> For the purposes of this Chapter:

(a) "counterfeit trademark goods" shall mean any goods, including packaging, bearing without authorization a trademark which is identical to the trademark validly registered in respect of such goods, or which cannot be distinguished in its essential aspects from such a trademark, and which thereby infringes the rights of the owner of the trademark in question under the law of the country of importation;

DRAFT  
**Subject to Legal Review for Clarity and Consistency**

provide adequate evidence to satisfy the competent authorities that, under the laws of the country of importation, there is *prima facie* an infringement of the right holder's intellectual property right and to supply sufficient information that may reasonably be expected to be within the right holder's knowledge to make the suspected goods reasonably recognizable by the customs authorities.

17. The competent authorities shall have the authority to require an applicant to provide a reasonable security or equivalent assurance sufficient to protect the defendant and the competent authorities and to prevent abuse. Such security or equivalent assurance shall not unreasonably deter recourse to these procedures.

18. Where the competent authorities have made a determination that goods are counterfeit or pirated, a Party shall grant the competent authorities the authority to inform the right holder of the names and addresses of the consignor, the importer and the consignee, and of the quantity of the goods in question.

19. Each party shall provide that the competent authorities may initiate border measures *ex officio*, without the need for a formal complaint from a private party or right holder. Such measures shall apply to shipments of pirated and counterfeit goods imported into or exported out of their territories, including shipments consigned to a local party. For transhipped goods that are not consigned to a local party, each Party shall, upon request, endeavor to examine such goods. For products transhipped through one Party destined to the territory of another Party, the former Party shall cooperate to provide all available information to the latter Party to enable effective enforcement of shipments of counterfeit or pirated goods. Each Party shall ensure that it has authority to undertake such cooperation in response to a request by the other Party on counterfeit or pirated goods en route to that other Party.

20. Goods that have been determined to be pirated or counterfeit by the competent authorities shall be destroyed, except in exceptional cases. In regard to counterfeit trademark goods, the simple removal of the trademark unlawfully affixed shall not be sufficient to permit the release of goods into the channels of commerce. In no event shall the competent authorities permit the export of counterfeit or pirated goods.

Criminal Procedures and Remedies

21. Each Party shall provide criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting or copyright or related rights piracy on a commercial scale.

Specifically:

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(b) "pirated copyright goods" shall mean any goods which are copies made without the consent of the right holder or person duly authorized by the right holder in the country of production and which are made directly or indirectly from an article where the making of that copy would have constituted an infringement of a copyright or a related right under the law of the country of importation.

DRAFT

**Subject to Legal Review for Clarity and Consistency**

- (a) Willful copyright or related rights piracy on a commercial scale is understood to include significant willful infringements of copyright or related rights which have no direct or indirect motivation of financial gain, as well as willful infringement for purposes of commercial advantage or financial gain.
- (b) Remedies available shall include imprisonment as well as monetary fines sufficiently high to deter future acts of infringement and with a policy to remove the monetary incentive to the infringer. Each Party shall further encourage that such fines be imposed by judicial authorities at levels sufficient to provide a deterrent to future infringements.
- (c) Each Party shall provide that its judicial authorities shall have the authority to order the seizure of suspected counterfeit or pirated goods, any related materials and implements which have been used in the commission of the offense, any assets traceable to the infringing activity, and documentary evidence relevant to the offense, that fall within the scope of such order. Items that are subject to seizure pursuant to a search order need not be individually identified so long as they fall within general categories specified in the order.
- (d) Each Party shall provide that its judicial authorities shall, except in exceptional cases, order the forfeiture and destruction of all counterfeit or pirated goods, and, at least with respect to piracy, materials and implements which have been used in the creation of the infringing goods. All such forfeiture and destruction shall be without compensation to the defendant of any kind.
- (e)
  - (i) Each Party shall provide that its authorities may initiate legal action ex officio, without the need for a formal complaint by a private party or right holder.
  - (ii) Each party may provide procedures for right holders to take private criminal actions. However, these procedures shall not be unduly burdensome or costly for right holders. Non-private criminal actions shall be the primary means by which each Party shall ensure its effective enforcement of its criminal law against willful copyright or related rights piracy. Each Party shall ensure that criminal actions are brought by the competent authorities, as necessary, to act as a deterrent to further infringements.

Limitations on Liability for Service Providers

22. (a) Each Party shall provide, consistent with the framework set forth in this Article: (i) legal incentives for service providers to cooperate with copyright<sup>16</sup> owners in deterring the unauthorized storage and transmission of copyrighted materials; and (ii) limitations in its law regarding the scope of remedies available against service providers for copyright infringements that they do not control, initiate or direct, and that take place through systems or networks controlled or operated by them or on their behalf, as set forth below.

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<sup>16</sup> For purposes of Article 16.9.22, Acopyright@shall also include related rights.

DRAFT

**Subject to Legal Review for Clarity and Consistency**

(b) These limitations shall preclude monetary relief and provide reasonable restrictions on injunctive relief for the following functions and shall be confined to those functions:<sup>17</sup> (i) transmitting, routing or providing connections for material without modification of its content, or the intermediate and transient storage of such material in the course thereof; (ii) caching carried out through an automatic process; (iii) storage at the direction of a user of material residing on a system or network controlled or operated by or for the service provider; and (iv) referring or linking users to an online location by using information location tools, including hyperlinks and directories. These limitations shall apply only where the service provider does not initiate the chain of transmission of the material, and does not select the material or its recipients (except to the extent that a function described in subparagraph (iv) in itself entails some form of selection). Qualification by a service provider for the limitations as to each function in subparagraphs (i) to (iv) shall be considered separately from qualification for the limitations as to each other function, in accordance with the conditions for qualification set forth in paragraphs (b), (c) and (d). This article does not preclude the availability of other defenses to copyright infringement that are of general applicability.

(c) With respect to functions (b)(ii), the limitations shall be conditioned on the service provider: (i) permitting access to cached material in significant part only to users of its system or network who have met conditions on user access to that material]; (ii) complying with rules concerning the refreshing, reloading, or other updating of the cached material when specified by the person making the material available online in accordance with a generally accepted industry standard data communications protocol for the system or network through which that person makes the material available; (iii) not interfering with technology consistent with industry standards accepted in each respective Party used at the originating site to obtain information about the use of the material, and not modifying its content in transmission to subsequent users; and (iv) expeditiously removing or disabling access, upon receipt of an effective notification of claimed infringement, to cached material that has been removed or access to which has been disabled at the originating site. With respect to functions (b)(iii) and (iv), the limitations shall be conditioned on the service provider: (i) not receiving a financial benefit directly attributable to the infringing activity, in circumstances where it has the right and ability to control such activity; (ii) expeditiously removing or disabling access to the material residing on its system or network upon obtaining actual knowledge of the infringement or becoming aware of facts or circumstances from which the infringement was apparent, such as through effective notifications of claimed infringement in accordance with subsection (f); and (iii) publicly designating a representative to receive such notifications.

(d) Eligibility for the limitations in this Article shall be conditioned on the service provider: (i) adopting and reasonably implementing a policy that provides for termination in appropriate

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<sup>17</sup> Either Party may request consultations with the other Party to consider how to address future functions of a similar nature under this paragraph.

DRAFT

**Subject to Legal Review for Clarity and Consistency**

circumstances of the accounts of repeat infringers; and (ii) accommodating and not interfering with standard technical measures accepted in each respective Party that protect and identify copyrighted material, that are developed through an open, voluntary process by a broad consensus of copyright owners and service providers, that are available on reasonable and nondiscriminatory terms, and that do not impose substantial costs on service providers or substantial burdens on their systems or networks. Eligibility for the limitations may not be conditioned on the service provider monitoring its service, or affirmatively seeking facts indicating infringing activity, except to the extent consistent with such technical measures.

(e) If the service provider qualifies for the limitations with respect to function (b)(i), injunctions shall be limited to terminating specified accounts, or to taking reasonable steps to block access to a specific, non-domestic online location. If the service provider qualifies for the limitations with respect to any other function in subsection (b), injunctions shall be limited to removing or disabling access to the infringing material, terminating specified accounts, and other remedies that a court may find necessary provided that such other remedies are the least burdensome to the service provider among comparably effective forms of relief. Any such injunctions shall be issued with due regard for the relative burden to the service provider and harm to the copyright owner, the technical feasibility and effectiveness of the remedy and whether less burdensome, comparably effective enforcement methods are available. Except for orders ensuring the preservation of evidence, or other orders having no material adverse effect on the operation of the service providers communications network, injunctive relief shall be available only where the service provider has received notice of the injunction proceedings referred to in this paragraph and an opportunity to appear before the judicial authority.

(f) For purposes of the notice and take down process for functions (b)(iii) and (iv), each Party shall establish appropriate procedures for effective notifications of claimed infringement, and effective counter-notifications by those whose material is removed or disabled through mistake or misidentification. Each Party shall also provide for monetary remedies against any person who makes a knowing material misrepresentation in a notification or counter-notification which causes injury to any interested party as a result of a service provider relying on the misrepresentation.

(g) If the service provider removes or disables access to material in good faith based on claimed or apparent infringement, it shall be exempted from liability for any resulting claims, provided that, in the case of material residing on its system or network, it takes reasonable steps promptly to notify the person making the material available on its system or network that it has done so and, if such person makes an effective counter-notification and is subject to jurisdiction in an infringement suit, to restore the material online unless the person giving the original effective notification seeks judicial relief within a reasonable time.

(h) Each Party shall establish an administrative or judicial procedure enabling copyright owners who have given effective notification of claimed infringement to obtain expeditiously from a service provider information in its possession identifying the alleged infringer.

(i) Service provider means, for purposes of function (b)(i), a provider of transmission, routing or connections for digital online communications without modification of their content between or

DRAFT  
**Subject to Legal Review for Clarity and Consistency**

among points specified by the user of material of the user's choosing, or for purposes of functions (b)(ii) through (iv) a provider or operator of facilities for online services or network access.

ARTICLE \_10: TRANSITIONAL PROVISION

1. Each Party shall implement the obligations in this Chapter within the following time periods:
  - (a) With respect to the obligations in Article 16.01.2(a)(ii) and Article 16.4.4, each Party agrees to accede to or sign and ratify the Conventions/treaties or give effect to the obligations within six months of the date of entry into force of this Agreement or December 31, 2004, whichever date is earlier.
  - (b) With respect to the remaining obligations in Article 16.01.2 (except that in Article 16.01.2(a)(ii) and Article 16.01.2(b)) and the obligations in relation to copyright and related rights (except that in Article 16.4.4), each Party agrees to accede to or sign and ratify the Conventions/treaties or give effect to them as relevant within one year of the date of entry into force of this Agreement.
  - (c) With respect to all other obligations under this Chapter, each Party agrees to implement them within six months of the date of entry into force of this Agreement.
2. Except as otherwise provided in this Chapter, it is agreed that ~~A~~date of entry into force@in Article 16.01.6(b) shall mean the date ending with the expiry of the six months period from the date of entry into force of this Agreement.
3. For the avoidance of doubt, it is the understanding between the Parties that the obligations under this Chapter shall be implemented as provided in this Article, notwithstanding the date of entry into force of the Agreement.

DRAFT  
**Subject to Legal Review for Clarity and Consistency**

**[Side Letter 1]**

1. a. With respect to criminal proceedings authorized under Section 336 (4) and (7) of the Criminal Procedural Code (Chapter 68), Singapore agrees that a right holder and/or its representative(s):
    - (i) shall be required to indemnify the Government only against compensation, costs, or expenses that are actually incurred or paid by the Government by reason of misrepresentations, and negligent or malicious acts or omissions by the right holder and/or its representative(s) in connection with such criminal proceedings; and
    - (ii) shall be entitled to make application under Section 401(1)(a) of the Criminal Procedure Code (Chapter 68) for an order for the payment by the accused persons of the costs arising from their prosecution where prosecution has resulted in a conviction arising from a full trial and if this has been approved by the Public Prosecutor, who will give serious consideration to the submission.
  2. In the declaration made by the rightholder or its representative to the Singapore Police Force as to disclosure of information pertaining to criminal raids, they shall only be required to declare, to the best of their knowledge, that information of such raids has not been disclosed by them to any unauthorized person.
2. Concerning the manufacture of optical discs, Singapore agrees to give effect to the following:
- a. License:
    - (i) No person shall manufacture in Singapore optical discs, including master discs or stampers used in the manufacture of discs, unless he holds a valid license to do so.
    - (ii) No licensee shall manufacture optical discs in any location other than the licensed premises.
    - (iii) In granting a license, the competent authority shall assign to the licensee a manufacturer's code (such as the source identification (SID) code currently deployed by optical media industries), and may impose such other conditions as it thinks fit.
  - b. Register: The competent authority shall establish and maintain a register of the licenses granted, which shall be available for public inspection.
  - c. Manufacturer's Code:
    - (i) Every licensee shall ensure that each optical disc manufactured is marked with the



DRAFT

**Subject to Legal Review for Clarity and Consistency**

manufacturer's code endorsed on his license.<sup>18</sup>

(ii) The standard for marking manufacturer's codes on optical discs shall include both a mould code and a mastering code. Every mould must be engraved with a mould code and every Laser Beam Recorder must be hardwired with a mastering code such that every master/stamper and every disc produced will bear markings identifying the source.

- d. Records: Every licensee shall maintain complete and accurate records of orders received, customers, suppliers, equipment, and discs manufactured. In addition, every licensee shall keep records on the quantity of optical disc grade polycarbonate received on the licensed premises, the quantity of such material being used for the manufacture of optical discs, the quality of such material being disposed in other manner, and the manner of disposal.
- e. Inspections: The competent authority shall carry out regular inspections without prior notice to ensure that the regulations and the conditions of the license are complied with, and shall be permitted to seize any items **B** including equipment **B** if there is a breach of the regulations or the conditions of the license. Every licensee shall produce its records for and permit inspection by the competent authorities at any time.
- f. Exemplars of Discs: Every licensee shall provide exemplars of discs from each of its manufacturing lines to law-enforcement authorities and right-holder organizations, and permit inspection by right-holder organizations.
- g. Offenses: A person who contravenes the obligations of the regulation or breaches any condition of the license shall be liable for a fine or imprisonment, or both. Except for minor violations, all equipment seized shall be forfeited and any license granted shall be revoked.
- h. Licensing: Singapore shall provide for a system of automatic licensing for the import into or the export from Singapore of **A**stampers~~@~~ and **A**masters~~@~~ and manufacturing equipment used in connection with the production of optical discs.

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<sup>18</sup> Singapore may provide an exception to this obligation in those cases where each rightholder that has a right in the content to be contained on an optical disc expressly requests that no manufacturer's code be marked on the optical disc. Singapore shall provide that before executing such request, the manufacturer shall verify, including through contact with the rightholder or its representatives, that any person making such a request owns the rights in question.

DRAFT

**Subject to Legal Review for Clarity and Consistency**

3. Pursuant to Article 148 of the Singapore Copyright Act (Cap 63), 1987, as amended, Singapore shall discontinue the operation of the compulsory licenses established in Articles 143 through 148 of the Act.
4. The United States and Singapore agree that nothing in paragraphs 1, 2, and 4(c) of Article \_08 shall affect (1) the authority of Singapore to grant an import license for a pharmaceutical product that is in all respects the same as a pharmaceutical product for which a product license has been granted, or (2) any exclusive right conferred by a patent in each Party for a pharmaceutical product for which a product license has been granted, should such a patent subsist.
5. With respect to the last sentence in Article 16.9.6 setting forth the obligation to provide for a presumption of subsistence of copyright, Singapore may implement the obligation with respect to civil cases by providing that if the defendant does not put subsistence of copyright in issue in good faith, subsistence shall stand as proved. If the defendant puts subsistence in issue in good faith, then the plaintiff may file an affidavit attesting to the facts of subsistence and, at that point, such subsistence shall be presumed, in the absence of proof to the contrary, and without the need for the affiant to be present in court unless the court deems it necessary to order otherwise.
6. To the extent that Singapore permits parallel importation of patented pharmaceutical products without the authorization of the manufacturer, Singapore shall have legislation or regulations in place to ensure compliance with product identity, safety, quality, integrity, manufacturing practices, and other relevant requirements related to health and safety. The government shall have adequate provisions for enforcing such requirements.
7. Nothing in this Agreement shall require Singapore to restrict the importation or domestic sale of a device that does not render effective a technological measure whose sole purpose is to control market segmentation for legitimate copies of motion pictures, and is not otherwise a violation of law.

DRAFT  
**Subject to Legal Review for Clarity and Consistency**

Side Letter 2

In meeting the obligations of Article 16.9.22(f), the Government of Singapore agrees to adopt requirements for: (a) effective written notice to service providers with respect to materials that are claimed to be infringing and (b) effective written counter-notification by those whose material is removed or disabled and who claim that it was disabled through mistake or misidentification, as set forth below. Substantial compliance with the elements listed below shall be deemed to be effective written notice or counter-notification.

(a) Model of an effective notice, by a copyright<sup>19</sup> owner or person authorized to act on behalf of an owner of an exclusive right, to a service provider's publicly designated representative<sup>20</sup>

In order for a notice to a service provider to be compliant with Article 16.9:22(f), it must be a written or electronic communication that includes substantially the following items:

1. The identity, address, telephone number and electronic mail address of the complaining party (or its authorized agent).

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<sup>19</sup> All references to copyright in this letter are understood to include related rights, and all references to works are understood to include the subject matter of related rights.

<sup>20</sup> It is understood that a representative is publicly designated to receive notification on behalf of a service provider if the representative's name, physical and electronic address, and telephone number are posted on a publicly accessible portion of the service provider's website, and also in a public register publicly accessible through the Internet or such other form or manner appropriate for Singapore.

DRAFT  
**Subject to Legal Review for Clarity and Consistency**

2. Information that is reasonably sufficient to enable the service provider to identify the copyrighted work(s)<sup>21</sup> claimed to have been infringed.
3. Information that is reasonably sufficient to permit the service provider to identify and locate the material that is residing on a system or network controlled or operated by it or for it, that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled.<sup>22</sup>
4. Statement that the complaining party has a good faith belief that use of the material in the manner complained of is not authorized by copyright owner, its agent or the law.
5. Statement that the information in the notice is accurate.

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<sup>21</sup> If multiple copyrighted works at, or linked to from, a single online site on a system or network controlled or operated by or for the service provider are covered by a single notification, a representative list of such works at, or linked to from, that site may be provided.

<sup>22</sup> In the case of notices regarding an information location tool pursuant to paragraph (b)(iv) of Article 16.9:22 information provided must be reasonably sufficient to permit the service provider to locate the reference or link residing on a system or network controlled or operated by or for it, except that in the case of a notice regarding a substantial number of references or links at a single online site residing on a system or network controlled or operated by or for the service provider, a representative list of such references or links at the site may be provided, if accompanied by information sufficient to permit the service provider to locate the references or links.

DRAFT

**Subject to Legal Review for Clarity and Consistency**

6. Statement with sufficient indicia of reliability<sup>23</sup> (such as a statement under penalty of perjury or equivalent legal sanctions) that the complaining party is the owner of an exclusive right that is allegedly infringed or is authorized to act on the owner's behalf.

7. The signature of the person giving notice.<sup>24</sup>

(b) Model of an Effective Counter-Notification by a Subscriber<sup>25</sup> Whose Material Was Removed or Disabled as a Result of Mistake or Misidentification of Material

In order for a counter-notification to a service provider to be compliant with Article 16.9:22(f), it must be written or electronic communication that includes substantially the following items:

1. The identity, address, telephone number and electronic mail address of the subscriber.
2. Identification of the material that has been removed or to which access has been disabled.
3. Location at which the material appeared before it was removed or access to it was disabled.
4. Statement with sufficient indicia of reliability (such as a statement under penalty of perjury or equivalent legal sanctions) that the subscriber is the supplier of the material and has a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material.
5. Statement that the subscriber agrees to be subject to orders of any court that has jurisdiction over the place where the subscriber's address is located, or if that address is located outside of the Party's territory, any other court with jurisdiction over any place in the Party's territory in which the service provider may be found, and in which a copyright infringement suit could be brought with respect to the alleged infringement.
6. Statement that the subscriber will accept service of process in any such suit.

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<sup>23</sup> To satisfy this requirement the process to be established shall not be costly or cumbersome. An appropriate electronic mechanism shall be used or incorporated in this process.

<sup>24</sup> A signature transmitted as part of an electronic communication satisfies this requirement.

<sup>25</sup> All references to Asubscriber@ in this letter refer to the person whose material has been removed or disabled by a service provider as a result of an effective notice described in paragraph (a) of this letter.

DRAFT  
**Subject to Legal Review for Clarity and Consistency**

7. The signature of the subscriber.<sup>26</sup>

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<sup>26</sup> A signature transmitted as part of an electronic communication satisfies this requirement.